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5 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 MICHAEL B. FJERSTAD,)

8 Plaintiff,)

9 v.)

10 SCOTT BACH, TYE HOLLAND, and CITY)
OF SEATTLE,)

11 Defendants.)

Case No. C08-0023-JCC-BAT

ORDER OF DISMISSAL

12 The Court, having reviewed Plaintiff's First Amended Complaint in this 42 U.S.C. § 1983
13 civil rights action, together with all material in support of those documents, Defendants' Motion
14 for Judgment on the Pleadings, the Report and Recommendation ("R&R") of United States
15 Magistrate Judge Brian A. Tsuchida, the governing law, and the balance of the record, does hereby
16 find and rule as follows.

17 Magistrate Judge Tsuchida issued an R&R on August 29, 2008, recommending that this
18 Court dismiss Plaintiff's civil rights complaint without prejudice because the action is based on
19 the same search and seizure Plaintiff has contested in his pending criminal case. (R&R 3 (Dkt. No.
20 42).) As Judge Tsuchida explained, the Ninth Circuit has held that a "§ 1983 action alleging illegal
21 search and seizure of evidence upon which criminal charges are based does not accrue until the
22 criminal charges have been dismissed or the conviction has been overturned." *Harvey v. Waldron*,
23 210 F.3d 1008, 1015 (9th Cir. 2000). Nothing in Plaintiff's objections (Dkt. No. 44, 48) provides a
basis on which the Court could find that Plaintiff's complaint should not be dismissed for this

1 reason. Accordingly, the Court hereby ORDERS:

- 2 1) The Court adopts the Report and Recommendation;
- 3 2) Defendants' Motion for Judgment on the pleadings (Dkt. 32) is GRANTED and
- 4 Plaintiff's First Amended Complaint (Dkt. 17) is DISMISSED without prejudice;
- 5 3) The Clerk of Court is directed to send copies of this Order to the parties and to
- 6 Magistrate Judge Brian A. Tsuchida.

7 DATED this 26th day of September, 2008.

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12 JOHN C. COUGHENOUR
13 United States District Judge

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